Overruling a parent's right to name their child

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Family analysis: When naming a child, where does parental responsibility (PR) end and significant harm begin? Ruth Henke QC, James Tillyard QC, Rhys Evans and Rhian Jones, barristers at Thirty Park Place Chambers, consider the Court of Appeal's judgment in Re C (Children) (Care: Change of forename).

Original news

Re C (Children) (Care: Change of forename) [2016] EWCA Civ 374, [2016] All ER (D) 113 (Apr)

The Court of Appeal dismissed a mother's appeal against an order that prevented her from naming her two children (who had been taken into care) 'Cyanide' and 'Preacher'. The naming of a child was an act of PR, the extent of which could be determined by a local authority. There was no restriction in the Children Act 1989 (ChA 1989) preventing an authority from overruling a parent in relation to a forename, but that was subject to a parent's rights under article 8 of the European Convention on Human Rights (ECHR). The judge had erred in finding that the authority could determine the mother's choice of name pursuant to ChA 1989, s 33(3)(b), where the proper route was for the matter to be put before the High Court by way of an application to invoke its inherent jurisdiction under ChA 1989, s 100.

What is the background to this case?

The mother had a very lengthy history of mental health difficulties (with repeated suicide/self-harm attempts), involvement in violent relationships and substance misuse. This resulted in her older children being made subject of care orders in 2013. In May 2015 she gave birth to twins which were said to have resulted from rape. During the pregnancy her mental health had remained very poor since the conclusion of the 2013 proceedings. Unfortunately, she denied any issues with her mental health and was refusing support services. She advised the local authority from the outset of her intention to name the babies, 'Cyanide' and 'Preacher'.

This led to the application pursuant to ChA 1989, s 100 which was heard at the Family Court in Swansea on 19 June 2015. HHJ Sharpe (sitting as a High Court judge under section 9 of the Senior Courts Act 1981 (SCA 1981)) directed on 24 June 2015 (judgment having been later handed down on 10 September 2015) that the local authority were permitted to restrict the extent to which the mother exercised her PR so as to prevent her registering the forenames 'Preacher' and 'Cyanide' and he made an injunction prohibiting the mother from so registering the children or referring to either of them by those forenames in contact pursuant to SCA 1981, s 37.

What were the key issues before the Court of Appeal?

The key issues before the Court of Appeal revolved around the exercise of PR. The mother's appeal was fourfold, namely that the judge:

- was wrong in concluding that the naming of the children and the registration of the children's birth were each an exercise of PR
- erred in concluding that a local authority has power under ChA 1989, s 33(3)(b) to determine that the mother should not register her children's births with her chosen names
- erred in concluding that the mother's duty to register the particulars of the birth did not engage the provisions of ChA 1989, s 33(9)
- erred in his use of SCA 1981, s 31 in the absence of the statutory power asserted under ChA 1989, s 33(3)(b), the judge was wrong to use this section to grant ancillary injunctive relief

Essentially, the mother sought to persuade the court that neither the provision of a forename, nor the registration of the same pursuant to the Births and Deaths Registration Act 1953 (BDRA 1953), were acts of PR. The respondents, the local authority and the children's guardian, argued that naming a child was an act of PR with the guardian arguing that

registration of birth was too. The local authority issued a respondent's notice arguing that this was an issue to be dealt with within the court's inherent jurisdiction. As King LJ summarised at para [22]:

> 'The legal route seems to me to necessitate the consideration of the following questions:
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> i) Are either or both of the naming of a child and registration of a child's birth and the entry onto the register of a child's name under the Births and Deaths Registration Act 1953 (BDRA 1953) acts of parental responsibility?
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> ii) If the naming of a child is an act of parental responsibility:
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> a) Can a local authority under the powers given to it under ChA 1989 prevent a mother from naming and registering her child with the name of her choice; and/or
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> b) Can a court under its inherent jurisdiction (notwithstanding the limitations placed on the exercise of those powers under section 100 ChA 1989) intervene in appropriate circumstances either to prevent the registration of a particular forename (or to change the name in question once registered)?'

How did the court approach the question of whether there is power in this jurisdiction to prevent a parent with parental responsibility from registering a child with the forename of his or her choice?

The Court of Appeal, in considering the authorities, observed a shifting trend in the approach to forenames, with King LJ noting (at para [50]) that now:

> '[…] forenames are used almost exclusively for all purposes, social and business, often, it would seem, entirely in the absence of surnames. Further the increase in blended families means that it is by no longer the universal norm for a family living together all to share the same surname.'

As to the power within this jurisdiction, the Court of Appeal first determined that both the naming of a child and the registration of that name are acts of PR (para [64]). As such, given that the local authority shared PR for the children under interim care orders, it had a power conferred upon it by ChA 1989, s 33 to limit the extent to which a parent may exercise their PR.

While the Court of Appeal considered that the approach taken by the judge at first instance (under ChA 1989, s 33 and SCA 1981, s 37) was superficially attractive, such was the, 'comprehensive invasion' of a parent's ECHR, art 8 rights, that such a proposed course of action should have to be brought before the High Court for consideration and approval via an application pursuant to ChA 1989, s 100. As such, the issue of whether there is a power within this jurisdiction of preventing a parent with PR from naming their child is dependent on whether the court is satisfied that to allow such a name to be used would likely cause that child significant harm (paras [108]–[109]).

What are the practical implications of the court's decision?

The court's decision provides practical guidance in terms of how rare cases such as this should be approached from both a procedural and evaluative perspective in the future. The practical implications come from a series of principle determinations made by the court, ie:

- the court determined that the choosing of a name for a child, and thereafter compliance by the mother and the father with the duties as to registration, are each acts of PR which carry not only rights and duties but also responsibilities, and
- the court endorsed the view of Butler-Sloss LJ (as she then was) in *Re D, L and LA (Care: Change of Forename)* [2003] 1 FLR 339 that forenames hold the same importance as surnames and the same principles should apply in considering and resolving any issue relating to a forename and surname

In addition, the court resolved an issue which has had limited attention in the case law to date, namely whether a child can be harmed by a name. The court concluded that:

- a child can be harmed by a name and that naming the female twin 'Cyanide' was capable, 'without more', of

giving the court reasonable cause to believe that she would be likely to suffer significant emotional harm, and
- this was a rare case where a forename chosen by a parent went beyond the bizarre, extreme or plain foolish and extended into significant harm

Having determined that the naming and registering of a child is an act of PR, and further determining that while a surname is specifically caught by ChA 1989, s 33(3)(b) but a forename is not, the court concluded that it would not be appropriate for a local authority that shares PR to simply exercise its statutory power to restrict the parental exercise of PR in giving a child a forename without recourse to the court. Rather, if the local authority considered that the child would suffer significant harm by the giving and registering of the chosen forename, it should bring the issue before the court. The mechanism for this is an application to the High Court under the auspices of the inherent jurisdiction where the court will be asked to 'limit, circumscribe or sanction the use of the power which the local authority already has' or refuse to sanction the proposed course of action as being contrary to and in breach of ECHR, art 8.

Are there any unresolved issues in this area?

The court did not consider it necessary to decide, for the purposes of the appeal, an issue which relates to the interpretation of BDRA 1953. BDRA 1953, s 1(2) sets out who is qualified to provide the necessary information to the registrar, these people are known as 'qualified informants'. BDRA 1953, s 2(1) provides that:

> 'In the case of every birth it shall be the duty—
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> (a) of the father and mother of the child; and
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> (b) in the case of death or inability of the father or mother, of each other qualified informant,
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> to give the registrar, before the expiration of a period of 42 days from the date of birth, information of the particulars required to be registered concerning the birth, and in the presence of the registrar to sign the register'

BDRA 1953, s 4 continues that after the expiration of 42 days the registrar can require any qualified informant to attend at a place appointed by the registrar to give the required information and to sign the register in the presence of the registrar. It was submitted on behalf of the mother that the effect of BDRA 1953, s 2(1) is that it is only after the prescribed 42 days has elapsed, that a qualified informant, other than a mother, married father or qualified informant pursuant to BDRA 1953, s 2(1)(i)(a) is permitted to register the birth of a child. The court did not consider it necessary to determine whether there was 'a roving power' under which other qualified informants may register a birth within the 42-day period.

Does the case indicate any developing trends?

This case is the first to grapple with the issue of whether a child can be harmed by a name, and whether a parent should be prevented from giving a child a name of their choosing if that name would cause the child significant harm. The court has been clear that cases which fall into this category will be rare however the case has gathered significant media interest and in the climate of social media comment, we are able to see first-hand that there are the mixed reactions to the court's determination.

The mixed reactions demonstrate that, while sectors of the public continue to believe it is a parents' right to give a child a name of their choosing regardless of the effect, others very clearly acknowledge that naming a child inappropriately can harm a child for life and welcome the court's decision in this case.

Ruth Henke QC, head of chambers, is an expert in the law relating to children and vulnerable adults. She regularly appears in the High Court and county court in sensitive and complex children proceedings (both public and private law) and in proceedings brought under the inherent jurisdiction.

James Tillyard QC has considerable experience in all aspects of family law, but in particular care and matrimonial money. He was appointed as a Recorder in 1998 and a deputy High Court judge in 2004.

Rhys Evans has an established public and private law children practice and is regularly instructed to act on behalf of local authorities, parents and children.

Rhian Jones' central practice area is family law focusing on public and private proceedings concerning children, at all court levels. Her practice extends into mental health applications and applications concerning vulnerable adults.

In Re C (Children) (Care: Change of forename) Ruth Henke QC and Rhys Evans represented the first respondent, and James Tillyard QC and Rhian Jones represented the second respondent.

Interviewed by Kate Beaumont.

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